

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, : 05-CR-205 (SJ)

-against- : United States Courthouse
Brooklyn, New York

DARRYN ALSTON, :
Defendant. :

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE STEVEN M. GOLD
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

For the Government: ROSLYNN R. MAUSKOPF, ESQ.
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For the Defendant: BY: SCOTT AUSTER, ESQ.

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1 THE COURT: Criminal cause for guilty plea,
2 United States of America versus Darryn Alston, Docket No.
3 50-CR-205 (SJ).

4 Counsel, please come forward and state your
5 appearances, for the record.

6 MS. KAVANAUGH: Good morning, your Honor.
7 Colleen Kavanaugh for the United States.

8 MR. AUSTER: Scott Auster for Defendant Darryn
9 Alston.

10 Good morning, your Honor.

11 THE COURT: Good morning, everybody.

12 Mr. Alston, do you speak and understand English?

13 THE DEFENDANT: Yes.

14 THE COURT: Mr. Alston, the reason you are here
15 today is that your lawyer, by placing this matter on my
16 calendar, has indicated that you wish to enter a plea of
17 guilty to a lesser included offence in Count One of the
18 indictment in which you are charged.

19 Before I may hear any plea of guilty you might
20 choose to offer, I need to make sure you understand that I
21 am not the judge who is presiding over your case. That is
22 United States District Judge Johnson. Judge Johnson is
23 the one who will decide whether any plea of guilty you
24 might choose to offer should be accepted and, if it is,
25 what sentence should be imposed in your case.

1 I am a magistrate, not a district judge like
2 Judge Johnson, and I do not have the authority under the
3 law to take those steps.

4 If you wish, you have the absolute right to have
5 it be Judge Johnson who listens to your plea. If that is
6 your choice, there will be no prejudice to you. You'll be
7 permitted to plead guilty before Judge Johnson under the
8 same terms and conditions being offered today on another
9 day that is more convenient to him.

10 In the alternative, though, I do have the
11 authority to be the judge who listens to you plead guilty
12 if I have your consent and agreement to do so.

13 If you do agree to proceed before me, I will
14 arrange for this entire proceeding to be recorded on tape
15 and for the tape-recording to be transcribed so Judge
16 Johnson will have a written record of everything that's
17 said here today and he can rely on that when he decides
18 whether to formally accept your plea or how to set your
19 sentence.

20 Did you understand all of that?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you want to give up your right to
23 have Judge Johnson hear your plea and do you agree to
24 proceed instead before me?

25 THE DEFENDANT: Yes.

1 THE COURT: Are you making this decision
2 voluntarily and of your own free will?

3 THE DEFENDANT: Yes.

4 THE COURT: Did anybody pressure you to agree to
5 this?

6 THE DEFENDANT: No.

7 THE COURT: Is this your signature on the
8 consent form?

9 THE DEFENDANT: Yes.

10 THE COURT: Did you review the form carefully
11 with your lawyer and understand it before you signed it?

12 THE DEFENDANT: Yes.

13 THE COURT: Mr. Auster, are you aware of any
14 reason why your client should not consent to proceed
15 before me for these limited purposes?

16 MR. AUSTER: No, your Honor.

17 THE COURT: I find the consent of the defendant
18 knowing and voluntary, and I add my endorsement to the
19 form to reflect my findings.

20 Mr. Auster, are you appointed or retained in
21 this matter?

22 MR. AUSTER: Appointed.

23 THE COURT: Mr. Alston, before I can recommend
24 to Judge Johnson that he accept any plea of guilty you
25 choose to offer today, I have to ask you many questions.

1 The questions are important. They are designed to make
2 sure you understand what a serious decision it is you are
3 about to make. They are further designed to make sure
4 that the prosecution and the Court are protected because
5 the questions will create a record which will demonstrate
6 that I explained your rights to you, you told me you
7 understood them and that you want to give them up.

8 And once all of that happens, if you go forward
9 with a guilty plea, it will be legally valid and
10 permanently binding upon you.

11 So I urge you to listen carefully to my
12 questions. If I ask you anything that you are not sure
13 you understand, I want you to tell me so I can rephrase
14 the question.

15 If you want to interrupt me at any point because
16 you have a question for me or you would like the chance to
17 speak privately with your lawyer, that is fine. Just
18 speak up and I will give you the opportunity. Is that
19 clear?

20 THE DEFENDANT: Yes.

21 THE COURT: It is very important that you tell
22 the truth today, and I will therefore direct you be placed
23 under oath before we proceed.

24 (Whereupon the defendant was duly sworn and
25 testified as follows:)

1 THE COURT: You are a member of Mr. Alston's
2 family and if you would like, you can come in closer. If
3 you would like to hear the proceeding, you can take a seat
4 at counsel table. Maybe you would be more comfortable
5 there.

6 Well, that is the prosecutor's pile.

7 Okay. Can you hear from over there?

8 Okay. All right.

9 MR. AUSTER: Thank you, your Honor.

10 THE COURT: Mr. Alston, now that you've been
11 sworn, when you answer my questions, you are doing so
12 under the penalties of perjury or making a false
13 statement.

14 That means that if you lie to me during this
15 proceeding, that does give rise to new charges against you
16 just for that. Is that clear to you?

17 THE DEFENDANT: Yes.

18 THE COURT: State your full name.

19 THE DEFENDANT: Darryn Alston.

20 THE COURT: How old are you?

21 THE DEFENDANT: 18.

22 THE COURT: When did you turn 18?

23 THE DEFENDANT: November 25th.

24 THE COURT: Of 2004?

25 THE DEFENDANT: Yes.

1 THE COURT: Maybe because the conspiracy
2 continues through January of '05, you contend that the
3 defendant is subject to prosecution as an adult?

4 MS. KAVANAUGH: Yes, Judge. We've had these
5 conversations, and the government would be able to ratify
6 Mr. Alston's participation in the conspiracy past his 18th
7 birthday.

8 THE COURT: How far did you go in school,
9 Mr. Alston?

10 THE DEFENDANT: 8th.

11 THE COURT: 8th grade.

12 Was that here in the United States?

13 THE DEFENDANT: Yes.

14 THE COURT: Is English your native language?

15 THE DEFENDANT: Yes.

16 THE COURT: Are you having any difficulty
17 understanding me today?

18 THE DEFENDANT: No.

19 THE COURT: Are you now or have you recently
20 been seeing a doctor or a psychologist or any healthcare
21 professional for any mental or physical problems?

22 THE DEFENDANT: No.

23 THE COURT: In the last 24 hours, have you taken
24 any narcotics, drugs, alcohol, medicine or pills?

25 THE DEFENDANT: No.

1 THE COURT: Have you ever in your life been
2 hospitalized or treated for drug or alcohol abuse or
3 psychiatric or emotional problems?

4 THE DEFENDANT: No.

5 THE COURT: You look like you didn't understand
6 that question.

7 When you don't understand a question, tell me.
8 I will ask it again and I won't mind. All right?

9 THE DEFENDANT: All right.

10 THE COURT: The question was whether you've ever
11 been in the hospital or seen by a doctor for a drug or
12 alcohol abuse problem.

13 Have you?

14 THE DEFENDANT: No.

15 THE COURT: What about for any kind of
16 psychiatric or emotional problems?

17 THE DEFENDANT: No.

18 THE COURT: Do you feel healthy, focused and
19 alert and of clear mind today?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand everything except
22 the one question I repeated that's happened so far?

23 THE DEFENDANT: Yes.

24 THE COURT: Mr. Auster, have you reviewed the
25 matter of pleading guilty with your client?

1 MR. AUSTER: I have, your Honor.

2 THE COURT: Does he in your judgment understand
3 the rights he will be waiving if he offers a guilty plea?

4 MR. AUSTER: He does.

5 THE COURT: Is he capable of understanding the
6 nature of these proceedings?

7 MR. AUSTER: Yes.

8 THE COURT: Do you have any doubt about his
9 competence to offer a guilty plea at this time?

10 MR. AUSTER: No.

11 THE COURT: Have you alerted him to the maximum
12 and minimum sentence and fine that might be imposed and
13 discussed with him the likely operation of the Sentencing
14 Guidelines?

15 MR. AUSTER: Yes.

16 THE COURT: Is it the government's understanding
17 that the defendant is a United States citizen?

18 MS. KAVANAUGH: Yes, your Honor.

19 THE COURT: Mr. Alston, have you had enough time
20 to go over your case very carefully with Mr. Auster and
21 have you in fact done that?

22 THE DEFENDANT: Yes.

23 THE COURT: Are you satisfied to have Mr. Auster
24 be the attorney who is defending you in this case?

25 THE DEFENDANT: Yes.

1 THE COURT: Have you received a copy of the
2 indictment where the charges against you are set forth in
3 writing.

4 THE DEFENDANT: Yes.

5 THE COURT: Have you reviewed the indictment
6 carefully with your attorney and satisfied yourself you
7 understand it?

8 THE DEFENDANT: Yes.

9 THE COURT: In Count One, you are charged with
10 knowingly and intentionally conspiring or agreeing to work
11 together with other people, including the others named in
12 the indictment, in the distribution of crack cocaine in an
13 amount exceeding 50 grams during the time period between
14 March 2004 and January 2005 and explicitly including the
15 time period after November of 2004.

16 Do you understand?

17 THE DEFENDANT: Yes.

18 THE COURT: In Count Two, you are charged with
19 actually participating in the distribution of that cocaine
20 and doing so within 1,000 feet of a public housing
21 authority.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: You have a right to plead not guilty
25 to these charges. You have that right even if you

1 committed these crimes. Pleading not guilty is never
2 lying or misleading the Court. Every defendant has the
3 right to plead not guilty and thereby exercise his right
4 to trial.

5 Did you understand me?

6 THE DEFENDANT: Yes.

7 THE COURT: If you were to plead not guilty,
8 then under the constitution and laws of the United States,
9 you would be entitled to a speedy and public trial by jury
10 with the assistance of your attorney on all of the charges
11 against you.

12 Is that clear to you?

13 THE DEFENDANT: Yes.

14 THE COURT: At your trial, you would be presumed
15 to be innocent. The prosecution would be required to
16 overcome the presumption of innocence and to prove that
17 you are guilty by competent evidence and beyond a
18 reasonable doubt. You would have no obligation to prove
19 that you were innocent. If the prosecution failed to
20 prove that you were guilty beyond a reasonable doubt, the
21 members of the jury would have the duty to return a not
22 guilty verdict and Judge Johnson would so instruct them.

23 Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: That is why juries sometimes return

1 verdicts of not guilty even though the members of the jury
2 believed the defendant on trial probably committed trials
3 with which he has been charged.

4 When jurors vote not guilty, they are not
5 necessarily saying that they believe the defendant on
6 trial is innocent. They are saying only I am not
7 convinced beyond a reasonable doubt that the defendant is
8 guilty.

9 Do you understand that difference?

10 THE DEFENDANT: Yes.

11 THE COURT: If you wish to proceed to trial,
12 then during the trial, the witnesses for the prosecution
13 would be required to come into the courtroom and to
14 present their testimony against you right in front of you
15 and your attorney. Your attorney would have the right to
16 question the prosecutor's witnesses on cross-examination.
17 Your attorney would have the right to raise objections
18 when the prosecution attempted to offer evidence against
19 you, and you and your attorney working together would have
20 the right to call witnesses and present evidence and make
21 arguments in your defense during the course of the trial.

22 Is that clear to you?

23 THE DEFENDANT: Yes.

24 THE COURT: If you proceeded to trial, you,
25 yourself, would have the right to testify as a witness in

1 your own defense at the trial if that's what you wanted to
2 do, but nobody could make you take the witness stand at
3 the trial if you didn't want to do that.

4 That's because the United States constitution
5 says that no one may be required to say anything
6 self-incriminating.

7 If you decided that you preferred not to testify
8 as a witness in your own defense at trial, Judge Johnson
9 would instruct the jurors that they couldn't take your
10 decision to remain silent into account or hold it against
11 you in any way when they decided what their verdict should
12 be.

13 Is that clear to you?

14 THE DEFENDANT: Yes.

15 THE COURT: On the other hand, if you offer a
16 plea of guilty and Judge Johnson decides that it should be
17 accepted, you will as a result be giving up your
18 constitutional right to a trial and all of the other
19 rights that I have been telling you about today.

20 There will be no further trial of any kind in
21 your case. You'll have no right to appeal from the
22 conviction or the judgment of guilty that will be entered
23 against you. Judge Johnson will essentially be convicting
24 you based upon your admission of guilt during the
25 proceeding we are holding right now. That will free the

1 prosecution of any duty to prove anything about what
2 you've done.

3 Is that clear to you?

4 THE DEFENDANT: Yes.

5 THE COURT: If you went to trial, and the jury
6 found you guilty by their verdict, you would have a right
7 to take an appeal and ask a higher court, we call the
8 Court of Appeals, to review the legality of all of the
9 proceedings that led up to your conviction.

10 But when you plead guilty, your conviction is
11 based upon your own decision to admit your guilt with your
12 own words, and as a result, there is no right to appeal
13 from the conviction that results.

14 Did you follow that?

15 THE DEFENDANT: Yes.

16 THE COURT: If you want to plead guilty, I am
17 going to have ask you questions about your involvement in
18 distributing crack cocaine so that Judge Johnson and I can
19 be satisfied that your plea of guilty is based upon real
20 facts.

21 If you decided you want to answer my questions,
22 which you don't have to do unless you want to plead
23 guilty, but if you decide that you want to answer my
24 questions and in doing so you admit your guilt, by virtue
25 of that decision, you will be giving up your

1 constitutional right not to incriminate yourself.

2 Did you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you still wish to give up your
5 right to trial and all the other rights I've told you
6 about today?

7 THE DEFENDANT: Yes.

8 THE COURT: I am asking you, now that I've
9 explained to you all of the rights that you have, as you
10 stand here before me now, do you want to give all of those
11 rights up and plead guilty instead of exercising them?

12 THE DEFENDANT: Yes.

13 THE COURT: You still want to plead guilty?

14 THE DEFENDANT: Yes.

15 THE COURT: It is my understanding that you are
16 making this decision under the terms of a written
17 agreement you've made with the prosecution?

18 THE DEFENDANT: Yes.

19 THE COURT: And I've had that agreement marked
20 as Court Exhibit 1 and I am going to ask Mr. Auster to
21 look at it with you now.

22 Do you recognize the agreement that I've put
23 before you and, in particular, did you sign the last page
24 with your own hand?

25 THE DEFENDANT: Yes.

1 THE COURT: Before you signed the document, did
2 you read it carefully?

3 THE DEFENDANT: Yes.

4 THE COURT: Did you go over it carefully with
5 Mr. Auster?

6 THE DEFENDANT: Yes.

7 THE COURT: Did you understand what you were
8 signing?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you have any questions about
11 anything it says that you would like to ask me or review
12 with Mr. Auster before you go forward?

13 THE DEFENDANT: No.

14 THE COURT: Everything in that document is clear
15 to you, Mr. Alston?

16 THE DEFENDANT: Yes.

17 THE COURT: Does that written agreement contain
18 a full and accurate statement of everything that you and
19 the prosecution have agreed to about this case?

20 THE DEFENDANT: Yes.

21 THE COURT: Did anybody promise you anything in
22 return for pleading guilty that is not written down in
23 your agreement?

24 THE DEFENDANT: No.

25 THE COURT: May I have the agreement back,

1 Mr. Auster?

2 The agreement says that you wish to plead guilty
3 to what lawyers call a lesser-included offense within
4 Count One, the conspiracy charge.

5 What I mean by lesser-included offense is this.
6 The indictment charges you with being part of a conspiracy
7 or a group of people working together to distribute more
8 than 50 grams of crack cocaine. You are being invited by
9 the prosecutor to plead guilty to being part of a
10 conspiracy, a group of people working together, to
11 distribute crack cocaine, but of no specified amount.

12 Do you understand the charge that you are being
13 asked to plead guilty to by the prosecution?

14 THE DEFENDANT: Yes.

15 THE COURT: I need to review with you the
16 penalties which confront you if you decide to plead guilty
17 to this charge.

18 Are you ready.

19 THE DEFENDANT: Yes.

20 THE COURT: The statute you are accused of
21 violating authorizes Judge Johnson to impose a sentence of
22 incarceration of up to 20 years.

23 Do you understand?

24 THE DEFENDANT: Yes.

25 THE COURT: In addition, the law requires Judge

1 Johnson to sentence you to a term of supervised release of
2 at least three years and authorizes a supervised release
3 term as long as the rest of your life.

4 Is that clear?

5 THE DEFENDANT: Yes.

6 THE COURT: Supervised release is a period of
7 time which will start to run only when you finish serving
8 whatever prison sentence Judge Johnson imposes upon you.

9 Once you get out of prison, you won't really be
10 free because you'll be subject to the close supervision of
11 a probation officer under supervised release.

12 You will have to follow a long list of rules,
13 more than I can list for you today. They will include,
14 but not be limited to, restrictions on your right to
15 travel freely and requirements that you report regularly
16 to your probation officer, that you answer your probation
17 officer's questions honestly, that you make every
18 responsible effort to follow any instructions your
19 probation officer gives you, and that you commit no new
20 crimes whatsoever while on supervised release.

21 Do you understand?

22 THE DEFENDANT: Yes.

23 THE COURT: If you break any of the rules of
24 your supervised release, that will be grounds for the
25 government to seek your arrest, to bring you back to the

1 Court and to ask Judge Johnson to impose an additional
2 sentence of up two years of incarceration on this drug
3 charge even though you had finished your original
4 sentence, even though you had been out on supervised
5 release for a substantial period of time.

6 That would be a new two-year sentence with no
7 credit for the time you spent serving the original
8 sentence or while on supervised release.

9 Did you follow all of that?

10 THE DEFENDANT: Yes.

11 THE COURT: You could be fined up to \$1 million
12 and you will be required to make a \$100 special assessment
13 at or about the time you are sentenced.

14 Is all of that clear to you?

15 THE DEFENDANT: Yes.

16 THE COURT: I want to turn your attention to
17 what we call the Sentencing Commission guidelines. These
18 guidelines will lead Judge Johnson to calculate a range of
19 months that the guidelines suggest are an appropriate
20 sentence or the appropriate sentence in your case.

21 Judge Johnson must take that suggested range of
22 months very seriously into account, very carefully into
23 account, and give it great weight when he decides what
24 your sentence should be.

25 Do you understand me so far?

1 THE DEFENDANT: Yes.

2 THE COURT: Have you talked about these
3 guidelines carefully with Mr. Auster?

4 THE DEFENDANT: Yes.

5 THE COURT: The prosecutor estimates that the
6 guideline range Judge Johnson will calculate will be 46 to
7 57 months' long.

8 That estimate, though, as carefully as I am sure
9 it was reached, is not binding on Judge Johnson. He'll
10 make his own decision, and he hasn't done that yet.

11 He won't make his decision until he receives a
12 Presentence Report about your case. The report hasn't
13 even been written yet.

14 Once the report is ready, you and your lawyer
15 and the prosecutor will appear before Judge Johnson.
16 You'll have an opportunity to speak to the judge. You can
17 tell him if there is anything in the report that you think
18 is wrong, and then Judge Johnson will make his own
19 guideline calculation, and it could be that he decides
20 that an even longer guideline range than the one predicted
21 by the government should be applied to your case.

22 Is that clear?

23 THE DEFENDANT: Yes.

24 THE COURT: Even after the judge decides what
25 the guideline range in your case should be, he might

1 decide that it would be more reasonable and appropriate to
2 impose a sentence outside of the guideline range, perhaps
3 shorter but also perhaps longer.

4 Do you understand that as well?

5 THE DEFENDANT: Yes.

6 THE COURT: If Judge Johnson decides to sentence
7 you to prison for 63 months, five years and three months,
8 or less, you will have no right to raise any legal
9 challenge to any aspect of your case.

10 Even if you are sentenced to more than 63
11 months, you'll have no right to say you don't want to
12 plead guilty anymore and no right to say that you want to
13 challenge the legality of your conviction.

14 The only right which will be triggered by a
15 sentence in excess of 63 months is a right to ask a higher
16 court to review the reasonableness of Judge Johnson's
17 decision to impose such a long sentence on you.

18 Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: You may have heard of parole.
21 Parole is a program of early release from a prison
22 sentence but it is not available in federal court to
23 defendants sentenced by federal judges. It is only
24 available in state court.

25 So whatever sentence you receive you will not be

1 released early on parole from it.

2 Is that clear to you?

3 THE DEFENDANT: Yes.

4 THE COURT: If you decide to go forward today
5 and you change your mind in the future, it could be too
6 late, because Judge Johnson has the authority to accept
7 and hold you to your plea of guilty based upon the record
8 of this proceeding without hearing anything further from
9 you.

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you have any questions you would
13 like to ask me or discuss privately with your lawyer about
14 your rights, the charges, the penalties or anything else
15 before we go forward?

16 THE DEFENDANT: No.

17 THE COURT: Everything I've told you today is
18 clear?

19 THE DEFENDANT: Yes.

20 THE COURT: Are you confident that you've had
21 enough time to make up your mind?

22 You are very young and this is going to affect
23 you for the rest of you're life.

24 THE DEFENDANT: Yes.

25 THE COURT: Are you ready to enter your plea?

1 THE DEFENDANT: Yes.

2 THE COURT: Mr. Auster, do you know of any
3 reason why your client should not tender a plea of guilty
4 pursuant to the terms of this agreement?

5 MR. AUSTER: No, your Honor. No your Honor,
6 except --

7 If I just may. Your Honor was talking about 63
8 months. Shouldn't that really be 57 months?

9 MS. KAVANAUGH: No. 63 months is the --

10 THE COURT: Paragraph 4.

11 MR. AUSTER: Oh, I'm sorry.

12 THE COURT: Okay.

13 Are you aware of any defense to the charges that
14 would cause you to counsel your client not to proceed
15 under this agreement?

16 MR. AUSTER: No.

17 THE COURT: Mr. Alston, with respect to the
18 lesser included offense within Count One, conspiring to
19 distribute an unspecified amount of crack cocaine after
20 November 2004 and before, how do you plead, guilty or not
21 guilty?

22 THE DEFENDANT: Guilty.

23 THE COURT: Are you making this guilty plea
24 voluntarily and of your own free will?

25 THE DEFENDANT: Yes.

1 THE COURT: Has anybody threatened or pressured
2 you or forced you in any way to offer this guilty plea?

3 THE DEFENDANT: No.

4 THE COURT: Other than what you've agreed to in
5 writing with the government in your plea agreement, has
6 anybody promised you anything in exchange for your guilty
7 plea?

8 THE DEFENDANT: No.

9 THE COURT: Other than what I've told you about
10 what the law permits Judge Johnson to do with respect to
11 your sentence, has anyone promised you anything about what
12 sentence Judge Johnson will set?

13 Tell me about what you did that makes you guilty
14 of this offense?

15 THE DEFENDANT: I plead guilty to selling crack
16 cocaine in my neighborhood projects.

17 THE COURT: Well, let's talk about that.

18 Were you part of a group of people that were
19 working together to sell crack cocaine or were you doing
20 this all by yourself?

21 MR. AUSTER: Do you understand?

22 THE COURT: You don't understand the question?

23 THE DEFENDANT: I plead guilty.

24 THE COURT: Well, I know you are pleading guilty
25 but I have to understand what you were doing.

1 So I am not trying to embarrass you and I am not
2 trying to make you feel like you're in trouble with
3 anybody else, but I do need to understand what was in your
4 mind and what you understood, so I can be satisfied that
5 you are really guilty of this charge and not just saying
6 so to get your case over with.

7 Are you with me?

8 THE DEFENDANT: Yes.

9 THE COURT: You said that you were selling crack
10 cocaine.

11 THE DEFENDANT: Yes.

12 THE COURT: Now I need to know, were you doing
13 it by yourself or were you working together with a group
14 of other people who were also selling crack cocaine and
15 working together as a team?

16 You are looking at me like you don't understand
17 me.

18 MS. KAVANAUGH: Judge, if I could interject for
19 a moment.

20 THE COURT: Go ahead.

21 MS. KAVANAUGH: Mr. Alston should understand
22 that by agreeing that he was part of a group and part of a
23 conspiracy, he's agreeing and pleading guilty to the
24 elements of the crime, but that his statements are not
25 going to be used against the other people.

1 I am not sure if that is part of the concern,
2 that he is implicating the other people, or not. I am not
3 sure if that is the issue.

4 THE COURT: Mr. Alston, once again, the count
5 that you are being asked to plead guilty to by the
6 prosecutor is a charge of conspiracy. That means it is a
7 charge that you were part of a group of people working
8 together to distribute crack cocaine.

9 If you got ahold of some crack cocaine for
10 yourself and you sold it to keep all the money, you got
11 it, you bagged it, you found the purchaser, you made the
12 deal and you kept the money, you are not guilty of a
13 conspiracy. You might be guilty of Count Two but not of
14 Count One; you shouldn't be pleading guilty to.

15 Are you understanding what I am saying to you?

16 THE DEFENDANT: Yes.

17 THE COURT: I am going to ask you again.

18 You've told me that you were selling crack
19 cocaine. I want to know whether you were acting alone or
20 whether you were part of a group of people working
21 together to distribute crack cocaine in the housing
22 project?

23 THE DEFENDANT: I was part of a group of people.

24 THE COURT: What was your specific role? Were
25 you a watcher? Were you delivering crack? Were you

1 taking money?

2 What were you doing?

3 THE DEFENDANT: I was selling.

4 THE COURT: You were selling.

5 THE DEFENDANT: Yes.

6 THE COURT: And were you receiving the crack from
7 other people and sharing the profits from the sales with
8 them?

9 THE DEFENDANT : Yes.

10 THE COURT: When you were selling the crack
11 cocaine, did you understand in your mind that the product
12 you were selling was in fact illegal narcotics?

13 THE DEFENDANT: Yes.

14 THE COURT: Where were you when you were making
15 these sales?

16 THE DEFENDANT: In a place they call (inaudible).

17 THE COURT: And what borough is that in?

18 THE DEFENDANT: Queens.

19 THE COURT: Over what period of time did you
20 make these sales?

21 Did you make some of these sales in December of
22 2004 and January of 2005?

23 THE DEFENDANT: Yes.

24 Excuse me.

25 MR. AUSTER: Excuse me.

1 (Defendant and counsel conferring).

2 THE COURT: Would you like a recess, Mr. Auster?
3 I don't want to mind giving you one. I think this is an
4 important day for your client.

5 Why don't you take the time you need. Is that
6 all right, marshal? You have the time?

7 THE MARSHAL: Yes, sure.

8 THE COURT: I want everybody to be comfortable
9 with what's happening. I don't want to ram anything down
10 anybody's throat.

11 We'll take a recess and we'll take the time it
12 takes. If the marshals can't keep him up here right now
13 because they are needed someplace else, we will do it
14 later today when their schedule can accommodate.

15 THE MARSHAL: Give me a call when you're ready.

16 THE COURT: I want him to be part of this
17 conversation. If you have to be someplace else, then
18 we'll put this off until later today when you can be here.
19 I don't care if it is the last matter of the day at night.
20 If you can stay here so he can participate in this
21 conversation, that's even better.

22 THE MARSHAL: All right.

23 (Continued on the next page.)
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1 (In open court)

2 (Second call).

3 THE LAW CLERK: All rise.

4 Criminal cause for guilty plea continued.

5 THE COURT: Let the record reflect that we've
6 had a recess of about 15 minutes.

7 Mr. Auster, have you and your client had an
8 opportunity to discuss whatever was on your client's mind
9 before we broke?

10 MR. AUSTER: Yes, your Honor.

11 THE COURT: Is your client still prepared to
12 proceed.

13 MR. AUSTER: He is, your Honor.

14 THE COURT: I must confess that I have been
15 concerned about the portion of what I overheard which was
16 a concern about whether or not Mr. Alston was involved in
17 any actions in furtherance of the conspiracy after he
18 reached the age of adulthood. That remains my concern.

19 How does Mr. Alston wish to address it?

20 MR. AUSTER: Your Honor, when the Court asked
21 him before whether or not he was involved in sales in
22 December and January, he said he did. That was a
23 misstatement. He was not actually involved in the actual
24 transfer of money and drugs in December and January. He
25 no longer worked in that capacity.

1 He indicates to me now he was like a steerer.

2 He was on the street with others --

3 THE COURT: In other words.

4 MR. AUSTER: He was --

5 THE COURT: He was --

6 MR. AUSTER: Sorry.

7 THE COURT: I just don't want you to --

8 MR. AUSTER: -- put the words in his mouth?

9 THE COURT: Yes, or to make admissions on his
10 behalf that might be usable.

11 Is he prepared to allocute to participating
12 actively in the conspiracy after he reached the age of
13 majority in some capacity?

14 MR. AUSTER: I believe so.

15 THE COURT: And Ms. Kavanaugh, is that your
16 understanding as well?

17 MS. KAVANAUGH: Judge, I have no concerns about
18 that.

19 I understand, and as the Court will remember, we
20 were actually here before, and Mr. Alston's father has
21 been quite involved, appropriately so given this
22 defendant's age.

23 I would also just note for the record that a lot
24 of the concerns, which is the reason why we took a break,
25 came from Mr. Alston's father, and while it is true, we do

1 not have direct undercover sales that were -- we do have
2 direct undercover sales against this defendant prior to
3 his 18th birthday, we would be able to prove at trial that
4 he continued in an active role in the conspiracy and I
5 believe after --

6 THE COURT: Through witness testimony?

7 MS. KAVANAUGH: Yes, your Honor. I believe
8 through the extensive discussions that have been ongoing
9 as of up to two minutes ago, that we're prepared to go
10 forward.

11 THE COURT: Thank you.

12 Mr. Alston, before we broke, I asked you what
13 your role was in the conspiracy. You admitted
14 participating in, and you told me, that your role involved
15 making sales of what you knew to be illegal narcotics,
16 working together with others and sharing the profits from
17 those sales.

18 I then asked you if you made any of those sales
19 during December of 2004 and January of 2005. Although you
20 answered yes, that led to a discussion where I understand
21 from your lawyer that you wish to change that response.

22 What would you like to tell me about what was
23 going on in December of 2004 and January of 2005?

24 THE DEFENDANT: I was actively selling. I was
25 selling (inaudible) by steering.

1 THE COURT: You were steering?

2 THE DEFENDANT: Yes.

3 THE COURT: By steering, do you mean that when
4 you saw people in the neighborhood that you believed to be
5 interested in buying crack cocaine, you directed them to a
6 location where they could do so knowing that other people
7 you were working with had crack cocaine to sell at those
8 locations?

9 THE DEFENDANT: Yes.

10 THE COURT: And did you understand that to be
11 part of your job in this group of people working together
12 to sell crack cocaine in the neighborhood?

13 THE DEFENDANT: Yes.

14 THE COURT: And that happened in December '05
15 and January '50 in Queens, New York?

16 THE DEFENDANT: Yes.

17 THE COURT: During the time after we broke and
18 before we reconvened in court --

19 THE DEFENDANT: Yes.

20 THE COURT: -- when you were discussing this case
21 with your lawyer and your father, did anybody promise you
22 anything in return for going forward with this guilty plea
23 or anything about the sentence Judge Johnson would set?

24 THE DEFENDANT: No.

25 THE COURT: Are you still acting voluntarily

1 and of your own free will?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you stand by what you just told
4 me?

5 THE DEFENDANT: Yes.

6 THE COURT: Counsel, are you aware of any reason
7 why I should not accept your client's plea of guilty?

8 MR. AUSTER: No, your Honor.

9 THE COURT: Is the prosecution satisfied with
10 the allocution as it stands?

11 MS. KAVANAUGH: The government is satisfied,
12 your Honor.

13 THE COURT: Based on the information given to
14 me, I find that the defendant, Darryn Alston, is acting
15 voluntarily, that he guilty understands his rights and the
16 consequences of his plea and that it is based upon fact.
17 I therefore recommend to Judge Johnson he accept this
18 defendant's plea of guilty to the lesser-included offense
19 within Count One described in his plea agreement.

20 Between today and sentencing, which will be set
21 by probation, Mr. Alston, you are going to be interviewed
22 by a probation officer.

23 The reason for that interview will be to help
24 the officer prepare that report I told you Judge Johnson
25 would use to decide what the appropriate sentence in your

1 case should be. So it is critical that you be cooperative
2 and candid with the probation officer during the
3 interview.

4 Counsel, is there anything else for my attention
5 today?

6 MS. KAVANAUGH: No, your Honor. Thank you very
7 much for your patience.

8 THE COURT: Sure.
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I certify to the best of my ability that the foregoing transcript is a true and accurate transcription of the audible portions of the electronic sound recording of the proceedings in the above-entitled matter.



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